



# PARENT DEFENDER COUNSEL CARDS

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## Jurisdiction

- 1) YC shall have exclusive original jurisdiction in all proceedings concerning
  - 1) A delinquent child
  - 2) A child in need of supervision
  - 3) A neglected child
  - 4) An abused child, or
  - 5) A dependent child EXCEPT in certain circumstances (43-21-151)
- 2) Jurisdiction attaches at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court.

## Venue

1. Delinquent Child/Child in Need of Supervision proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, YC may, in the best interest of the child, transfer the case for disposition to the county where the child resides or to a YC that previously had jurisdiction.
2. Abused/Neglected Child proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit. After adjudication, YC may, in the best interest of the child, transfer the case for disposition to the county where the child resides or to a YC that previously had jurisdiction.



# PARENT DEFENDER COUNSEL CARDS

## Representation of Parents

Miss. Code Ann. 43-21-201

1. Each party shall have the right to be represented by counsel at ALL STAGES, Including, but not limited to, detention, adjudicatory and disposition hearings.  
..
2. When a party FIRST appears before the youth court, the judge SHALL ascertain whether the party is represented by counsel, and if not, inform him of his rights including his right to counsel. If the parent is a party to an abuse, Neglect or TPR, and is indigent, the youth court judge may appoint counsel to Represent the indigent parent or guardian.

If you are an attorney GAL for the child,...

4. The child's attorney shall owe the same duties of undivided loyalty, confidentiality and competent representation to the minor child as is due an adult client pursuant to Mississippi Rules of Professional Conduct.

**Parent, guardian, custodian, attorney for parent shall have right to inspect and receive copy of record "Relevant to a matter to be heard by a Youth Court". 43-21-261**

**Allows Review Hearings to be held upon the request of the child's attorney, a parent's attorney, or a parent as deemed appropriate by the youth court in protecting the best interests of the child." 43-21-613**



# PARENT DEFENDER COUNSEL CARDS

## Taking into Custody without an Order (Removal)

An Agent of CPS may take a child into immediate custody IF:

1. There is **probable cause (see next page)** to believe that the child is in immediate danger of personal harm.
2. There is probable cause to believe that immediate custody is necessary as set forth in Section 43-21-301(3); AND
3. There is no reasonable alternative to custody.

## 43-21-301(3)

The Judge or Designee may require law enforcement/CPS to take a child into custody for a period of NOT LONGER than forty-eight (48) hours, excluding weekends and holidays.

Custody orders may be issued if it appears that there is probable cause to believe that:

1. The child is within the jurisdiction of the court;
2. Custody is necessary because of **ANY** of the following reasons
  1. The child is endangered
  2. Any person would be endangered by the child
  3. To ensure the child's attendance in court
  4. Parent, guardian or custodian is not available to provide care and supervision for the child; AND
3. There is no reasonable alternative to custody



# PARENT DEFENDER COUNSEL CARDS

## Probable Cause with Drugs Miss. Code Section 43-21-301(3)

A finding of probable cause SHALL NOT be based SOLELY upon a positive drug test of a newborn or parent for marijuana; however, a finding of probable cause MAY be based upon an **EVIDENCE-BASED** finding of harm to the child or a parent's inability to provide for the care and supervision of the child due to the parent's use of marijuana.

Probable cause for unlawful use of ANY controlled substance, except marijuana as provided for above, MAY be based on

1. A Parent's positive drug test for unlawful use of a controlled substance ONLY if the child is endangered or the parent is unable to provide proper care or supervision of the child BECAUSE of the unlawful use AND there is no reasonable alternative to custody; AND
2. Upon a newborns' positive drug screen for a controlled substance that was used unlawfully ONLY IF the child is endangered OR the parent is unable to provide proper care or supervision of the child because of the unlawful use and there is no reasonable alternative to custody



# PARENT DEFENDER COUNSEL CARDS

## SHELTER HEARINGS

### **Standard of Proof** – PROBABLE CAUSE

**Notice Requirements** – Reasonable Oral or written notice of the time, place and purpose of the hearing shall be given to (1) the child, (2) his/her parent, guardian or custodian; to child's GAL, court appointed CASA AND to his or her COUNSEL!

All parties are afforded the opportunity to present evidence and cross-examine witnesses. YC may receive any testimony and other evidence RELEVANT to the necessity for the continued custody of the child without regard to rules of evidence, including hearsay and opinion evidence.

The Court at the conclusion of the shelter, shall find:

1. That there is probable cause the child is within the jurisdiction of court;
2. There is probable cause that custody is necessary. Because the child is endangered or any person would be endangered by the child; or to insure the child's attendance, or when a parent is not available to provide for the care and supervision AND there is no reasonable alternative to custody ; AND
3. The effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child; the placement of the child in foster care is in the best interest of the child; AND
  1. Reasonable efforts have been made to maintain the child within his own home, but circumstances warrant removal AND there is no reasonable alternative to custody; OR
  2. The circumstances are emergency so that no reasonable efforts have been made **AND** there is no reasonable alternative to custody.



# PARENT DEFENDER COUNSEL CARDS

## PRACTICE TIPS FOR SHELTERS

### Before the Shelter

- Speak with parent and get the background
- Start identifying relatives with parents
- Get with social worker to get their recommendation
- Ask what safety concern warrants a removal of the child

### Shelter Hearing

- Cross examine CPS worker on reasonable efforts to maintain child within his/her home
- Ask for details of their investigation so far
- Ask CPS worker about identifying relatives (collateral sources)
- Ask CPS worker about Service Agreement
- Ask basic questions about neglect
  - Did you go into the home? Was it safe, suitable and appropriate
  - How are the children doing in school
  - Did the kids appear improperly dressed
  - Did the kids appear malnourished
  - Did the child say if they wanted to stay home or go to a stranger's house
  - What type of visitation schedule is the Agency proposing?

The Goal is to prevent unnecessary removals and keep the children out of state custody. If that is not an option, the next goal is to drill down on CPS regarding a Service Agreement to address the issues that have us there so we can get the child(ren) back as soon as possible.



# PARENT DEFENDER COUNSEL CARDS

## Adjudication Hearing

If child remained in state custody, must be held in thirty (30) days, if child is not in state custody, must be held in ninety (90) days

**Standard of Proof** - Preponderance of the Evidence

**Notice** – When a Petition has been filed and the date of the hearing has been set by the youth court, the judge shall order the clerk to issue a summons to the following to appear: (1) child named in the Petition; (2) the person(s) having custody or control of the minor child; (3) the parent or guardian of the child; (4) any other person who the court deems necessary. **WAIVERS** a party other than the child may waive service by written stipulation or voluntary appearance. The Youth Court may proceed to a hearing IF ALL OTHER PARTIES ARE PROPERLY BEFORE THE COURT. Further, at the time of waiver, a copy of the petition shall be given to the party.

**Conduct of Hearing** – At the beginning of the hearing, the YC **SHALL** verify the name, age and residence of the child, ascertain whether all necessary parties are present and identify all persons participated, ascertain whether notice requirements have been complied with and, if not, whether the affected parties **INTELLIGENTLY** waived compliance with the notice requirements, explain to the parties the purpose of the hearing and the possible dispositional alternative and explain to the parties: (1) the right to counsel; (2) the right to remain silent; (3) the right to subpoena witnesses; (4) the right to confront and cross examine witnesses; AND (5) the right to appeal. **THEN** the YC should ascertain whether the parties are represented by counsel. If the party wishes to obtain counsel, the court **SHALL** continue the hearing. If indigent, Ct. may appoint counsel for party. If indigent, Ct. may appoint counsel for party. The youth court may then inquire whether the parties admit or deny the allegations in the petition and may at any time terminate the proceedings and dismiss the petition if the youth court finds such action to be conducive to the welfare of the child and in the best interest of the state.



# PARENT DEFENDER COUNSEL CARDS

## Adjudication Hearing

**Uncontested** - At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations if the judge finds that: (1) the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations; (2) the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under this chapter; (3) the parties making the admission have not in the reported admission to the allegation set forth facts that, if found to be true, constitute a defense to the allegation; **and** (4) the child making the admission is effectively represented by counsel.

**EVIDENCE** In arriving at its adjudicatory decision, the youth court shall consider **only evidence which has been formally admitted at the adjudicatory hearing**. All testimony shall be under oath and may be in narrative form. In proceedings to determine whether a child is a neglected child or an abused child, the youth court shall admit any evidence that would be admissible in a civil proceeding.

**RULING** If the court finds from a **preponderance of the evidence** that the child is a neglected child, an abused child, a dependent child or a child in need of special care the youth court shall enter an order adjudicating the child to be a neglected child, an abused child, dependent child or a child in need of special care. **Upon a written motion by a party**, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a delinquent child, a child in need of supervision, a neglected child, an abused child, a dependent child or a child in need of special care.



# PARENT DEFENDER COUNSEL CARDS

## PRACTICE TIPS FOR ADJUDICATIONS

### Before the Adjudication

- Speak with parent on visitation/Service Agreement
- Start identifying relatives with parents (if child is still in foster home)
- Get with social worker to get their recommendation
- Get with GAL on investigation/recommendation (have they spoken to the child, who have they spoken to?)
- Ask what safety concern warrants a removal of the child

### Adjudication Hearing

- If there are service issues, RAISE THEM NOW!
- THE RULES OF EVIDENCE APPLY TO THE FULLEST EXTENT
- Cross examine CPS worker about investigation (watch for hearsay)
- Drill down on investigation
- Drill down on visitations with child(ren) and parent(s)
- Ask CPS worker about Service Agreement
- Ask basic questions about proof
  - What evidence did you find that supports an adjudication
  - How are the children doing in school
  - How does the service agreement address the specific issue?
  - Can the child(ren) go home today?
  - Have you spoken to the child (ren)? When? How many times?
  - What type of visitation schedule is the Agency proposing?

The Goal is to get the children back home as soon as possible. We also want reliable, relevant evidence. If we do not OBJECT, we WAIVE for appeal purposes. MAKE A RECORD!



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## POSSIBLE ISSUES

### Sufficiency of the Petition

- While a neglect petition perhaps should not be held to the same standard as a criminal indictment, the petition—given Sections 43-21-455 and 43-21-105—has to be legally sufficient to provide the minor and her parents notice of “the particular circumstances which will be inquired into at the adjudicatory proceedings.” *In Interest of Dennis*, 291 So.2d at 733.
- In the absence of a causal connection between the facts alleged in the petition and the petition's charge of neglect, the petition was legally insufficient to provide notice to E.K., Elizabeth or Timothy of “the particular circumstances which w[ere to] be inquired into at the adjudicatory proceedings.” *E.K. v. Mississippi Dep't of Child Prot. Servs.*,

### HEARSAY – out of court statement offered to prove the trust of the matter asserted. OBJECT!!

- Any time you hear a worker say “my supervisor said...” “the caseworker said...” OBJECT!
- Common Exceptions, the State may argue:
  - Tender Years - 803 (25) Tender Years Exception. A statement by a child of tender years describing any act of **sexual contact** with or by another is admissible if: (A) the court – **after a hearing** outside the jury’s presence – determines that the statement’s time, content, and circumstances provide substantial indicia of reliability; and **(B) the child either: (i) testifies; or (ii) is unavailable as a witness, and other evidence corroborates the act**
  - Medical Diagnosis and Treatment - 803 (4) Statement Made for Medical Diagnosis or Treatment. A statement that: (A) is made to any person at any time for – and is reasonably pertinent to – medical diagnosis or



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- ❑ treatment; (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause; and (C) is supported by circumstances that substantially indicate its trustworthiness. In this paragraph, “medical” includes emotional, mental, and physical health.
- ❑ Business Record Exception - 803(6) Records of Regularly Conducted Activity- (6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if: (A) the record was made at or near the time by – or from information transmitted by – someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11); and (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness. **The source of the material must be an informant with knowledge who is acting in the course of the regularly conducted activity. This is exemplified by the leading case of *Johnson v. Lutz*, 253 N.Y 124, 170 N.E 517 (1930), which is still the applicable law today under the rule. That case held that a police report which contained information obtained from a bystander was inadmissible; the officer qualified as one acting in the regular course of a business, but the informant did not.**



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## DRUG TESTS!

- What kind of test is being used and where?
- Many tests have insert that says they are not reliable.
- If testing outside of court, does state have witness present to authenticate?
- If testing done at court, who is reading the result and are they qualified?
- What prescription drugs is your client taking?
- Will any of those show a false positive?

## CHALLENGE YOUR GAL

Did the GAL interview the parties/children?

What independent investigation? Cross Examination regarding report.

**(IF YOU DON'T RAISE THIS, IT IS WAIVED)**

**REMEMBER** Appointment of an attorney if conflict exists. If there is a **conflict** between the **child's preferences and guardian ad litem's recommendation**, the court **shall** retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child's preferences. The court shall then continue the proceedings for a reasonable time to allow the newly appointed attorney to prepare for the cause.

## POTENTIAL OUTCOMES

- Dismissed
- Adjudicated and Reunified
- Adjudicated and remain in CPS custody, but placed in home for 90 day trial home placement
- Adjudicated and remain in CPS custody in foster care



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## Disposition Hearing

If the child has been adjudicated a delinquent child, a child in need of supervision, a neglected child or an abused child, the youth court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing, however, may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings.

At the beginning of each disposition hearing, the judge **shall** inform the parties of the purpose of the hearing. All testimony shall be under oath unless waived by all parties and may be in narrative form. The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence. At the conclusion of the evidence, **the youth court shall give the parties an opportunity to present oral argument.**

If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, among others, the following relevant factors:

- The child's physical and mental conditions;
- The child's need of assistance;
- The manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;
- The ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and
- Relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.



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## Disposition Hearing

If the youth court orders that the custody or supervision of a child who has been adjudicated abused or neglected be placed with the Department of Human Services or any other person or public or private agency, **other than the child's parent, guardian or custodian**, the youth court shall find and the disposition order shall recite that:

- Reasonable efforts have been made to maintain the child within his own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or
- The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody; and
- That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that the placement of the child in foster care is in the best interests of the child; or
- Reasonable efforts to maintain the child within his home shall not be required if the court determines that:
  - The parent has subjected the child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse and sexual abuse; or
  - The parent has been convicted of murder of another child of that parent, voluntary manslaughter of another child of that parent, aided or abetted, attempted, conspired or solicited to commit that murder or voluntary manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or
  - The parental rights of the parent to a sibling have been terminated involuntarily; **and**
  - That the effect of the continuation of the child's residence within his own home would be contrary to the welfare of the child and that placement of the child in foster care is in the best interests of the child.



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## Disposition Hearing

Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

### POST ADJUDICATION/DISPOSITION

- 90 day Home Placement
- Motion for Reconsideration/New Trial
- Appeal
- Motion Practice
- Permanency Hearings
- Permanency Review Hearings
- Termination of Parental Rights

## Permanency/Permanency Review Hearing

### Time of Hearing

When reasonable efforts to maintain child within the home are NOT required

- Within thirty (30) days of such finding (Disposition)

When reasonable efforts to maintain child within the home ARE required

- For any child who has been placed with CPS or any other person/agency other than the child's parent, guardian or custodian, within six (6) months after the earlier of:
  - An adjudication that the child has been adjudicated or neglected; OR
  - The date of the child's removal from the allegedly abusive or neglectful parent. The court MAY extend the period of time to conduct the hearing for an additional six (6) months UPON finding extraordinary and compelling reasons for extending the time period in the best interest of the child.



## PERMANENCY

- Court **SHALL** require a written report and may require information or statements from CPS, parent, guardian for an evaluation of the family's progress and recommendations for modifying the permanency plan and concurrent plan is in the best interest of the child.
- SHALL determine whether the child should be:
  - Returned to the parent(s);
  - Placed with suitable relatives;
  - Referred for TPR;
  - Establish durable legal custody; or
  - Continue in foster care on a permanent or long-term basis

At a permanency hearing, the Court may find that TPR is **NOT** in the child's best interest if: (1) The child is being cared for by a relative; AND/OR (2) CPS has documented compelling reasons why TPR would not be in the child's best interest.

Otherwise, CPS may forward a TPR package to the AG's office if:

(1) The child is in the legal custody of CPS; AND (2) The Court ordered permanency plan or concurrent plan is adoption

- At least annually after each permanency hearing for as long as the child remains in CPS custody.
- Includes cases where rights have been terminated until the child is adopted or an appropriate permanency plan is achieved.
- Summons no less than three (3) days prior to hearing, except for any person who has already been served with process or who has already appeared in court proceedings in this cause; and who has received sufficient notice of the time, date, place and purpose of the permanency review hearing.